

# Pollution Pays

## Failure to Enforce Clean Water Laws in Pennsylvania

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## Acknowledgments

*Pollution Pays* was made possible by grants to Environmental Working Group from The Beldon Fund, the W. Alton Jones Foundation, the Joyce Foundation, and The Turner Foundation. The opinions expressed in this report are those of the authors and do not necessarily reflect the views of the supporters listed above. Environmental Working Group is responsible for any errors of fact or interpretation contained in this report.

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# Pollution Pays: Failure to Enforce Clean Water Laws in Pennsylvania

A new computer investigation by the Environmental Working Group shows that large industrial polluters in Pennsylvania are breaking the nation's cornerstone water pollution law and routinely getting away with it. Big water polluters are almost never fined and violations of the clean water laws continue largely unabated, according to U.S. Environmental Protection Agency (EPA) Clean Water Act enforcement records analyzed by EWG.

In 1995, Governor Tom Ridge took office promising to overhaul the "job-crushing, community-harassing, regulatory nightmare" of a Department of Environmental Resources (DER). As promised, Ridge split the DER into two new agencies, with the Department of Environmental Protection (DEP) taking over all permitting and enforcement functions, while the Department of Conservation and Natural Resources has responsibility for parks and forestry.

According to Ridge, the newly-formed DEP has "...actively pursued an agenda that moves away from the philosophy of heavy-handed regulation and punitive sanctions. Instead, we are moving toward a common sense, compliance driven, consumer oriented strategy." (Remarks given at Pennsylvania Environmental Council Annual Dinner in Philadelphia, May 31, 1995). As if to illustrate this point, Ridge created the "Office of Pollution Prevention and Compliance Assistance" rather than the more traditionally titled "Office of Enforcement."

Wary that this approach might appear soft on polluters, DEP director James Seif assured citizens on Earth Day 1996 that, "Even under the Department of Environmental Protection's new approach to achieving compliance with environmental rules and regulations, fines and penalties will remain an important and powerful tool for those who willfully disregard those laws." (James Seif, "Taking the Next Step: Thorough Enforcement". Published by DEP for Earth Day 1996).

## Findings

EWG analyzed U.S. EPA Clean Water Act enforcement records from 23 Pennsylvania facilities for April 1997 through March 1999, the most recent two-year period available. These data, audited by industry and state regulators prior to their release, represent an important but limited number of industries. They include all permitted polluters in auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries in the state. They reveal a persistent pattern of violations of state and federal clean water laws by big polluters in Pennsylvania. The records further show that the law breaking is made possible by weak state enforcement efforts, and tiny or non-existent fines. Overall:

*Five years after Governor Ridge entered office, breaking clean water laws is standard business practice for big industry in Pennsylvania.*

- Nearly two-thirds (14 of the 23) major facilities inspected were in violation of the Clean Water Act at some time in the two-year period analyzed. Industrial facilities are designated as “major” based on an EPA classification system that reflects a combination of factors, including toxic pollution potential, streamflow volume, public health impacts, and proximity to coastal waters.
- These 14 violators broke the law regularly, accruing violations an average of three of the eight quarters in the two-year period analyzed.
- Even the most recalcitrant environmental law breakers are rarely if ever fined. The Sun Company in Philadelphia was in violation of the Clean Water Act in each of the past eight quarters analyzed, yet was not fined at all during this time.

**Table 1. Fourteen of twenty-three major facilities\* in Pennsylvania violated the Clean Water Act at least once in the past two years. No fines have been levied.**

Company	City	Number of quarters in violation of the Clean Water Act (4/97-3/99)*	Penalties Assessed
Sun Company Inc (R & M)	Philadelphia, PA	8 of 8	\$0
Armco Inc.	Butler, PA	6 of 8	\$0
Lukens Steel, a Sub Of Lukens,	Coatesville, PA	6 of 8	\$0
Witco Corporation	Bradford, PA	5 of 8	\$0
Zinc Corporation of America	Monaca, PA	3 of 8	\$0
Bayway Refining	Trainer, PA	3 of 8	\$0
United Refining Inc	Warren, PA	3 of 8	\$0
Bethlehem Steel Corp.	Bethlehem, PA	2 of 8	\$0
Willamette Industries Inc.	Johnsonburg, PA	2 of 8	\$0
International Paper Co.	Lock Haven, PA	2 of 8	\$0
Astor Corp./Petro. Div.	Farmer's Valley, PA	1 of 8	\$0
Pennzoil Products Company	Rouseville, PA	1 of 8	\$0
USX Corp	Braddock, PA	1 of 8	\$0
Carpenter Technology Corp.	Reading, PA	1 of 8	\$0
Procter & Gamble Paper Product	Mehoopany, PA	0 of 8	\$0
Appleton Papers Inc.	Roaring Spring, PA	0 of 8	\$0
P.H. Glatfelter Co.**	Spring Grove, PA	0 of 8	\$0
Sun Company Inc	Marcus Hook, PA	0 of 8	\$0
Allegheny Ludlum Corp.	Brackenridge, PA	0 of 8	\$0
Universal Stainless & Alloy	Bridgeville, PA	0 of 8	\$0
Standard Steel	Burnham, PA	0 of 8	\$0
Pennsylvania Steel Technologies	Steelton, PA	0 of 8	\$0
Allegheny Ludlum Corp.	Washington, PA	0 of 8	\$0

Source: Environmental Working Group. Compiled from EPA SFIP Data.

\* SFIP data used for this report includes all major facilities in five industries: Auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries. Violations are reported on a quarterly basis and no distinction is made between single or multiple violations.

\*\* The SFIP data might underestimate the number of violations. For example, P.H. Glatfelter Company has never complied with the color limits in its CWA permit, but the state has not reported this as a violation because of a side agreement negotiated between the state and the company that purports to allow the company to violate this limit.

## CLASSIFICATION AS "MINOR" FACILITY CREATES MAJOR LOOPHOLE FOR BIG POLLUTERS

Industrial facilities discharging wastewater to public sewage treatment plants -- instead of directly into rivers or streams -- are classified as "minor" under the Clean Water Act, regardless of the volume or toxicity of the pollution that they, quite literally, dump down the drain. This reporting loophole virtually ensures weak enforcement of clean water laws against some major industrial polluters.

States are not required to report the violations or compliance status of "minor" facilities to U.S. EPA. This means, for example, that large auto assembly plants dumping their wastewater down the public sewer are considered minor polluters and their compliance with the CWA is not required to be tracked by the EPA. Instead, the publicly financed sewage treatment facilities that receive this pollution are categorized as "major" polluters if they serve a population of 10,000 or more, discharge one million gallons or more of wastewater daily, or have a significant impact on water quality. Further, public water treatment facilities, as opposed to state enforcement authorities, are required to adopt mechanisms to enforce pretreatment standards against industrial discharges.

### *Weak law enforcement makes environmental crime pay in Pennsylvania*

- None of the 14 companies in violation of the Clean Water Act during the past two years were fined for their violations.
- Two facilities, Zinc Corporation of America and Bethlehem Steel Corporation, are currently considered "significant violators" of the Clean Water Act. These companies were not fined for their CWA violations during the two-year period analyzed.

### Conclusions

Big business routinely claims that most regulatory actions are initiated by "over-zealous big-government regulators" for minor paperwork violations that consume massive amounts of resources for little environmental gain. The facts are that few

enforcement actions are brought in the first place and almost none are for recordkeeping violations. In both 1997 and 1996, less than two percent of all environmental enforcement actions nationwide were concluded with only recordkeeping changes. In contrast to the image of a crushing regulatory burden, this analysis clearly shows that there is barely any enforcement at all of existing clean water protections and virtually no pressure for water polluters to comply with current pollution control laws.

Imagine a drunk motorist racing down I-76 at 120 miles an hour. The state highway patrol wouldn't offer "compliance assistance" to this individual. He or she would be thrown in jail and fined for endangering the health of dozens of other Pennsylvanians.

However, if a large industrial facility is endangering thousands of Pennsylvanians by fouling waterways, its operators are almost never even fined. They are instead consid-

ered customers of the Ridge Administration, who must be helped to be in compliance with the state's public health and environmental laws.

In spite of all the rhetoric to the contrary, there is little factual evidence that anything other than stepped-up enforcement, larger fines, and tougher federal government oversight will increase compliance with environmental laws and reduce the serious levels of water pollution that continue to foul Pennsylvania's lakes and rivers.

### **Recommendations**

Major improvements in water quality in Pennsylvania could be achieved just by strict enforcement of current laws and regulations. To achieve this goal however, both state and federal environmental enforcement agencies need to vastly improve their enforcement activities. Industry, in turn, needs to operate without such opportunistic disregard for environmental rules it typically helped to write.

### *To improve enforcement of the Clean Water Act:*

- Pennsylvania should set strict limits on the discretion of its regulatory agencies. Facilities should not be allowed to be out of compliance with environmental laws for more than two quarters in any one-year period without facing mandatory penalties. A good example of a more effective state enforcement policy is the New Jersey law that is based on the popular "three strikes and you're out" model.
- The regional U.S. EPA office should exercise its authority and take over cases when Pennsylvania assesses insufficient fines or delays during the enforcement process.
- Citizens should be informed every quarter about the compliance status of Pennsylvania's major companies.

# Methodology

This analysis is based on data from EPA's new Sector Facility Index Project (SFIP). The SFIP contains quality checked compliance and enforcement data. The SFIP database is available on-line at:

<http://es.epa.gov/oeca/sfi/>

The five industries covered in the SFIP are: automobile assembly, iron and steel, petroleum refining, pulp manufacturing, and smelting and refining (aluminum, copper, lead, and zinc). The SFIP database has detailed information on 640 facilities in these industries operating as of 1996. U.S. EPA continues to monitor the five industries that are represented in the SFIP database and intends to add or remove facilities as appropriate.

## Summary of Data Quality Assurance Review

U.S. EPA worked for three years to identify the facilities in SFIP and to assure the accuracy and usefulness of the data. As part of this effort, all facilities had an opportunity to review the data. Sixty-two percent of the

facilities responded. U.S. EPA and the states then reviewed the responses and made changes to the data as appropriate.

Two-thirds of the SFIP facilities submitted comments as part of the quality assurance review that was open from August through October 1997. A small number of comments have been received and processed since the October deadline. The review categorized data elements into two categories: major elements, which include linked permits, enforcement actions and facility compliance status; and minor elements, which include facility name, address and date of inspection.

Approximately 37,000 major data elements were presented to the facilities that submitted comments. Comments were received on 3,400 data elements. Of those, U.S. EPA and the state governments agreed that changes were appropriate in 1,700 cases. Comments were received on approximately 1,000 of the 19,000 minor data elements presented. Of those, U.S. EPA and the state governments agreed that changes were appropriate in 500 cases.



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